

**STATEMENT ON BEHALF OF THE
ASSOCIATION OF ADMINISTRATIVE LAW JUDGES**

By

RONALD G. BERNOSKI, PRESIDENT

Before the

**SUBCOMMITTEE ON FEDERAL WORKFORCE and
AGENCY ORGANIZATION**

**COMMITTEE ON GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES**

Regarding the Hearing on

**Fair and Balanced?
The Status of Pay and Benefits
For Non-Article III Judges**

May 16, 2006

Mr. Chairman and Members of the Subcommittee:

I. INTRODUCTION

Thank you for the opportunity to testify before you today. My name is Ronald G. Bernoski. I am an Administrative Law Judge (“ALJ”) who has been hearing Social Security disability cases at the Office of Hearings and Appeals (“OHA”) of the Social Security Administration (“SSA”) in Milwaukee, Wisconsin, for over 25 years.

I am the President of the Association of Administrative Law Judges (“AALJ”). Our organization represents the administrative law judges employed in the Social Security Administration and the Department of Health and Human Services (“DHHS”). One of the stated purposes of the AALJ is to promote and preserve full due process hearings in compliance with the Administrative Procedure Act for those individuals who seek adjudication of program entitlement disputes within the SSA. The AALJ represents about 1100 of the approximate 1400 administrative law judges in the Federal government. Administrative law judges handle cases that go to the heart of the economic and social structure of our nation. Typically, these cases present complex legal and factual issue involving laws and regulations related to agriculture, banking, energy, labor, transportation, new medications, Medicare and social security

II. STATEMENT

I am appearing and testifying here today on behalf of all administrative law judges in support of the *Administrative Law Judges Retirement Act of 2005 (H. R. 1864)*. This legislation addresses the present inequity in the pensions of Federal administrative law judges. The proposed system provides retirement benefits at the same level as that now received by members of Congress, Congressional staff, law enforcement officers and some Article I judicial groups. The bill will allow for a Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS) annuity enhancement to the amounts of 2.5% and 1.7% respectively. Notably, Administrative law judges will individually pay an increased contribution for this pension benefit.

This change is needed because most administrative law judges enter government service late in their professional careers. The lack of an adequate pension is causing a large and increasing number of administrative law judges to work until advanced age to achieve a Federal pension based on the government-wide average of 30 years of service. This is particularly true for administrative law judges who enter government service from the private practice of the law without an existing adequately funded retirement program. This legislation addresses this problem. The proposed pension benefit will allow more administrative law judges to retire at a dignified age and not require them to work into old age. Without this correction, many administrative law judges from the private practice of law will be required to work until the age of mid-80 to obtain a pension based on 30 years of government service. This is because many of these judges enter government service for the first time after age 45. For example, the last class of Social

Security Administration new judges had an average age of 56.7 years. One result of this legislation will be to create a younger more efficient administrative law judge corps with judges who will be more accustomed to working in the emerging “electronic” environment of the modern governmental workplace.

Administrative law judges should receive a fair pension for the same reasons they are provided to other judges, judicial officers and select Federal employees: to attract highly qualified candidates, retain highly experienced adjudicators, and assure the public of the independence and integrity of their adjudicators’ decision-making. Administrative law judge pensions should be sufficiently adequate to attract superior attorneys to the position. Administrative law judges not only provide due process adjudications to the American people, but are the first and only experience for a large segment of the public in formal governmental proceedings. Administrative law judges provide the only “day in court” for millions of Americans in a hearing room. Therefore, it is important that administrative law judges be competent and highly qualified to attract outstanding candidates. The administrative law judge position must provide for a just pension and must have the same safeguards of judicial independence as other members of the judiciary. In the administrative procedure Act, the Congress established this independence and in doing so, recognized its importance to the America people.

An inadequate pension was not intended when Congress enacted FERS. The small size of the pension for FERS employees, compared to the CSRS pension, was justified when enacted by Congress on the grounds that the Social Security retirement benefits (“RSI”) and proceeds from the Thrift Savings Plan (“TSP”) would make up for the large difference in CSRS and FERS pensions. Congress expected that RSI alone would replace 34% to 37% of the average Federal employees’ annual earnings. This expectation has proven erroneous for retired administrative law judges and other federal employees with high salaries. RSI does not, as Congress intended, make up for the reduction of the pension benefit in FERS compared to CSRS. The reason for the shortfall in RSI is an administrative law judge has earnings that exceed the maximum earnings level that is subject to the Social Security tax. The RSI component of an administrative law judge’s retirement under FERS is therefore capped. This means that the same maximum RSI benefit that is worth 24% of salary at the maximum benefit threshold is worth only about 15% of salary to an administrative law judge because of the cap on earnings subject to taxation. The proposed FERS pension enhancement in this legislation will help to close most of the RSI gap to ensure a retirement for administrative law judges at a standard of living commensurate with their salaries, and as intended by Congress when it created FERS.

The *Administrative Law Judges Retirement Act of 2005 (H.R. 1864)* is a very low cost bill. The September 2003 Congressional Budget Office Cost Estimate for the bill projects a 2004-2013 ten year net direct cost for the pension bill of only \$14 million, or an average of \$1.4 million per year. Under the Congressional “pay as you go” budget rules, which Congress allowed to expire in 2003, the net impact of a bill upon the Federal budget is determined by offsetting the bill’s “revenues” against the “direct cost.” This method is considered to be the most accurate

representation of a bill's cost. The CBO found the low net direct cost based upon a 2004-2013 ten year direct cost to the Federal government of \$34 million for increased CSRS and FERS retirement benefits to administrative law judges that will be paid out of the Office of Personnel Management's Civil Service Retirement and Disability Fund ("the Fund") offset by 2004-2013 ten year revenues of \$20 million from the additional individual contributions from administrative law judges to the pension plans that are provided for in the bill.

The CBO report for the pension bill separately projects a 2004-2013 ten year increase of \$56 million in the Federal agencies' spending that is subject to appropriation to cover the agencies' increased FERS contributions to the Fund to pay for the enhanced FERS retirement benefits for administrative law judges in their employ, since FERS is a fully-funded pension system. There is no increase in the Federal agencies' spending that is subject to appropriation for the agencies' CSRS contributions, since there is no statutory mechanism that mandates that any increase in the CSRS unfunded liability be paid into the Fund. This result demonstrates a very low cost to the agencies that employ administrative law judges to cover the increased cost of FERS. The cost of the bill is minimal for all administrative law judge employing agencies, except for the Social Security Administration, which employs over 80 percent of the administrative law judges. (The increase in spending for FERS that is subject to appropriation impacts the agencies' budgets because the spending is a mandated expenditure that must come out of the agencies' discretionary budgets, regardless of whether Congress increases the agencies' budget to cover it. If Congress does not increase the agencies' budgets, no actual increase in overall government spending by the agencies occurs. If Congress does increase the agencies' budgets, there is an increase in overall government spending by the agencies.)

The retirement age of Federal administrative law judges is, on average, 10 years greater than other Federal employees. The age of many of our current administrative law judges is between 70 to 80 years. As noted earlier, delayed retirement is often not a voluntary decision for administrative law judges. Rather, they are forced to work into their 70's and 80's as an earlier retirement with only a partial retirement benefit would result in financial hardship. That is, an administrative law judge appointed at age 60 who retires at age 75 would have a substantially reduced pension. For this individual, the need for a full retirement benefit may well require this judge to work until age 90. The minimal cost associated with the administrative law judge pension reform bill would serve as an incentive to administrative law judges with significant Federal service to retire sooner. However, this minimal cost is, to a degree offset by payroll savings from newly appointed judges whose pay would begin at the first level of a seven tier pay schedule established by the Office of Personnel Management. Thus, once an administrative law judge retires, the Federal agencies no longer are paying the administrative law judge's compensation; rather, it is paid from the CSRS and FERS Retirement Fund that is administered by the Office of Personnel Management.

An unintended consequence of a fair and equitable pension benefit would be the appointment of younger administrative law judges who will likely have much greater

experience with the use of technology in an adjudication setting. As the Federal government transitions to expansive use of new technology to accommodate its goal of progressing to a paperless work environment, judges more experienced with these technological changes may well be more efficient and effective with its use. Obviously, this experience would benefit the American people.

Virtually all Federal judges, Federal judicial officers, and state judges have retirement pension benefits substantially greater than the pensions provided to administrative law judges. Four groups of Article I Federal judicial officers that have enhanced CSRS pensions identical to that which the administrative law judges now seek are: (1) U.S. Bankruptcy Judges, (2) U.S. Magistrates, (3) U.S. Court of Federal Claims Judges, and (4) U.S. Court of Appeals for the Armed Forces Judges. These Federal judicial officers do not have enhanced FERS pension benefits because they have had separate 80-100% of salary pension plans since the 1980s. Members of Congress, Congressional staffers, and many federal law enforcement employees also have the same enhanced CSRS and FERS pensions that the administrative law judges now seek, but they do not also have separate pension plans such as those in force for the Article I Federal judicial officers.

The *Administrative Law Judges Retirement Act of 2005 (H. R. 1864)* would increase the annual pension benefit accrual rate for the administrative law judges enrolled in CSRS to 2.5% and administrative law judges enrolled in FERS to 1.7% of the administrative law judges' average pay (high three consecutive years) for all years of administrative law judge service, including all past administrative law judge service, and up to five years of countable military service. All of the employee groups who have received a CSRS and FERS annuity enhancement receive the same enhanced annual pension benefit accrual rate as the Members of Congress and Congressional staffers (2.5% in CSRS and 1.7% in FERS), including four groups of Federal judicial officers and many Federal law enforcement employees.

The bill would provide administrative law judges with three new immediate annuity options in CSRS and FERS: (1) a full annuity after becoming 55 years of age and completing 10 years of administrative law judge service, (2) a reduced annuity upon voluntary early retirement before age 55 and after completing 10 years of administrative law judge service, and (3) a full annuity at any age after completing 5 years of civilian service upon involuntary separation or an "early out" voluntary early retirement. This is low cost legislation that meets the public's need for good efficient government.

III. SUMMARY

On behalf of the Federal administrative law judiciary, I respectfully ask for your support of this important legislation. The *Administrative Law Judges Retirement Act of 2005 (H. R. 1864)* will permit administrative law judges to retire in early old age, after 30 years of government service with a dignified pension. This improvement will allow a "turn over" of administrative law judges and it will provide for a younger Corps of administrative law judges who are better suited to work in the modern work environment. The bill is

low cost and according to the CBO it will cost about \$1.4 million per year. The legislation will also result in a short term reduction in administrative law judge salary costs for the agencies, especially the Social Security Administration.

Respectfully submitted,

Ronald G. Bernoski
President, AALJ